

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

Phillip S. Scherrer

v.

Civil No. 08-cv-2-SM

United States of America

NOTICE OF RULING

Re: (Document No. 26) United States of America's Motion
Requesting Evidentiary Hearing

Ruling: Granted. It is sometimes difficult to understand the government's pleadings. A pleading filed on October 5, 2009, (doc. no. 24) seemed to concede that relief under Section 2255 was appropriate, given the two psychological evaluations, the second performed at the government's request. That pleading also announced an agreement, of sorts, that the government apparently thought would resolve the petition. The government sought a stay to finalize "plea negotiations," which was granted out of deference, but, by order dated October 7, 2009, the government was directed to show cause within thirty (30) days why relief in the nature of vacation of petitioner's conviction and sentence should not be afforded, on grounds that he was not fully competent due to the effect of prescribed medications at the time he pleaded guilty. Now, the government has filed a motion requesting an evidentiary hearing on the petition, at which it presumably will oppose the petition. Although the government has not, strictly speaking, shown cause why relief should not be granted, it does seem to be suggesting that its position has changed and it wishes the opportunity to do so at an evidentiary hearing. The clerk shall schedule an evidentiary hearing on the petition.

Entered by: Steven J. McAuliffe, Chief Judge

Date: November 9, 2009

cc: Liam D. Scully, Esq.
Aixa Maldonado-Quinones, Esq.